acted honestly but he appears to have acted hastily, probably because he was aware of the impending crash of MacPhail. There has been, in my opinion, a wilful blindness and absence of enquiry on his part in accepting the cheques.

Where the holder of negotiable securities otherwise *bona fide* and for value takes from a person whom he knows or suspects to have a merely limited interest he acquires no larger interest than him from whom he had taken. This principle was applied in *Earl of Sheffield* v. *London Joint Stock Bank.*[3] The facts of that case are simple. A moneylender obtained advances from various banks on the security of share scrips with accompanying transfers signed in blank, deposited with him by a client as security for a loan. The securities in fact did not belong to the client but were loaned to him by a third party for the purpose of pledging them for the loan. Subsequently, the banks sold some of the securities and applied the proceeds in satisfaction of the amount due and owing to them. In an action brought by the third party against the banks for the recovery of the proceeds of sale of the shares and for the return of the remaining scrips, it was held by the House of Lords reversing the judgment of the Court of Appeal, that though the banks had acquired the legal title to the securities, they were not purchasers for value without notice and were therefore bound to pay the amount realised from the sale of securities less the sum due and owing by the original borrower to the moneylender and to return the unsold securities. It was held that the character of the transaction between the moneylender and the banks was by itself, sufficient to notify to them that his interest was limited. In the instant case, the character of the transaction in respect of which the cheques were alleged to have been issued was actually communicated to the bank manager. He knew that the cheques were given for the purpose of buying shares but he did not enquire or care to enquire whether consideration had passed by the purchase and delivery of the shares.

It must follow from the principle enunciated in the abovementioned case that where the original holder could not have successfully maintained an action on the cheques, then the subsequent holder who is a purchaser for value with notice cannot be placed in a better position. In this case MacPhail could not have successfully maintained an action against the defendant as the cheques were not accepted for value.

In view of my finding, it is not necessary for me to consider the question as to whether or not the plaintiff is barred by law from maintaining this action by virtue of the judgment obtained by plaintiff in Ipoh High Court Civil Suit No. 125 of 1965 against MacPhail.

The action is dismissed with costs.

Action dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; N. Sharma.*

Re application of LAU SWEE SOONG; LAU SWEE SOONG v. GOH KENG SWEE & ANOR.

[O.C.J. (Choor Singh J.) September 11, 1967]

[Singapore — Originating Motion No. 36 of 1967]

Contempt of Court — Comments prejudicial to applicant in a pending criminal trial — Statement by Minister to newspaper — Prevailing circumstances — Duty of government to maintain law and order and to give information — Duty of government Minister — Statements to public — Matters of public interest — Courts of Judicature Act, 1964, s.25(2) — R.S.C. Prelim. Rules r.2 & O.LII.

This was an application by originating motion for committal orders for contempt of the Second Criminal District Court against two Ministers of Government for making and publishing statements prejudicial to the applicant in his pending trial in the said court.

A riotous demonstration took place outside the City Hall on November 4, 1966 and out of such incidents the applicant was arrested, charged, and was awaiting trial.

While such trial was pending press statements were issued by the respondents or their Ministries and broadcast and given publicity by Government medium of radio and television in respect of these rioting incidents.

It was alleged by the applicant that the effect of these impugned statements which were brought out in extenso at the trial had a tendency to obstruct the proper course of justice and to prejudice his trial.

Held: (1) the test is whether the matter complained of was calculated to interfere with the course of justice. Intention or knowledge of the author of the statement is irrelevant;

(2) in applying the law of contempt it is necessary not to lose sight of prevailing circumstances and local conditions;

(3) it is the duty of the government to maintain law and order and keep the public informed;

(4) there was nothing in the statements complained of which directly or indirectly identified the applicant as one of the rioters;

(5) the statements were not calculated to prejudice the fair trial of the applicant;

(6) even if the statements were in fact calculated to prejudice the fair trial of the applicant, the contempt of court was not such a contempt as would justify interference by way of the summary procedure adopted in this case. The court should exercise its jurisdiction only when the risk of interference with the proper administration of justice is a real and grave one.

Per Curiam: To suggest that the Government should not give information to the public by radio and television on matters of great public interest relating to the maintenance of law and order is simply to demand the abandonment by the Government of their duty and the surrender of their authority. To grant a committal order in these proceedings and thereby restrain the

publication of similar statements in future would be simply in effect to make an order that while those who defy law and order are to be at liberty to do and say whatever they think fit in pursuit of their political purpose, no voice is to be raised on behalf of the vast majority of the community who believe their most valued interests to be menaced and assailed. The two statements with which we are concerned in these proceedings were made by the first respondent in the faithful discharge of the high duty to keep the public informed especially in the context of the circumstances prevailing in Singapore, lest evil-doers twist the facts and distort the real truth for their own nefarious and evil ends.

Of course, it does not follow that a statement made or issued by a Government Minister can never constitute contempt of court or that a Government Minister should never be punished for contempt of court. A Minister of the Government is not above the law and if a statement made by him is calculated to prejudice the fair trial of an accused person, and if the risk of interference with the proper administration of justice is a real and grave one, such contempt will be met with the necessary punishment in order to restrain such conduct. But in considering ministerial statements made in the discharge of a public duty, the court must be very cautious that it does not by its act interfere unnecessarily with and abridge the right of the Government to comment on matters so largely involving the public interest. Although it is obvious that a ministerial statement relating to incidents involving defiance of law and order may sometimes give rise to complaints of alleged prejudice to an accused person awaiting trial, the court, should not lightly interfere with the Government's right to make such statements, unless of course it is satisfied that under cover and pretence of comment on a matter of public importance, it was intended to prejudice the course of justice in a pending trial.

Cases referred to:—

(1) *Skipworth's Case* (1873), L.R. 9 Q.B. 230.

(2) *Daw* v. *Eley* (1868), L.R. 7 Eq. 49.

(3) *R.* v. *Odhams Press Ltd. & Ors.* [1956] 3 W.L.R. 796.

(4) *Roach* v. *Garvan* (1742), 2 Atk. 461.

(5) *Ex p. Jones* (1806), 13 Ves. Jun. 237.

(6) *R.* v. *Parnell & Ors.* 14 Cox C.C. 470.

(7) *Vine Products Ltd.* v. *Green* [1965] 3 W.L.R. 791.

(8) *R.* v. *Duffy & Ors.* [1960] 2 Q.B. 188.

(9) *R.* v. *Davies, ex parte Delbert-Evans,* [1945] 1 K.B. 436.

(10) *Re Sin Poh Amalgamated Ltd. & Ors.* [1954] M.L.J. 152.

(11) *Public Prosecutor* v. *Straits Times* [1949] M.L.J. 81.

(12) *R.* v. *Tibbits* [1900-03] All E.R. Rep. 896 at p. 901.

(13) *Hunt* v. *Clarke* (1889), 58 L.J. Q.B. 490.

(14) *Meriden Britannia Co.* v. *Walters* (1913), 25 D.L.R. 167.

(15) *R.* v. *Payne* [1896] 1 Q.B. 577.

(16) *Plating Company* v. *Farquharson* 17 Ch. D. 49 at p. 55.

(17) *The King* v. *The Freeman's Journal* [1902] 2 I.R. 82.

(18) *Pontefract Election Petition* 9 T.L.R. 431.

(19) *Re application of Foong Jam Keong, ante,* p. 202.

The following cases and authorities were also cited in argument: *R.* v. *Clark Ex parte Griffin* [1908-10] All E.R. Rep. 915; *R.* v. *Dolan* [1907] 2 Irish Reports 260; *Foxcroft* v. *Lacey* (1614), Hobart 89; 18 E.R. 239; *Henane* v. *Bets* 83 E.R. 1091; *Gathercoles Case* 168 E.R. 1140; *Bankin Chandra Paira* v. *Anand Bayar Patrika* A.I.R. 1950 Cal. 129; *Re Hinde, Thornbill* v. *Steel-Morris* (1911), 56 Sol. Jo. 34; *Public Prosecutor* v. *Abdul Samad* [1953] M.L.J. 118; *R.* v. *Brish Bhan* [1950] Cr. L.J. 1219; *Emperor* v. *Khushol Chand* A.I.R. 1945 Lahore 206; *Re Abdul Aziz's application* [1962] M.L.J. 64;; *R.* v. *Davies* [1904-07] All E.R. Rep. 60; *R.* v. *Editor, Evening Standard,* 40 T.L.R. 833; *R.* v. *Editor of Daily Mail* 44 T.L.R. 303; *R.* v. *Bolam & Ors.* (1949), 93 Sol. Jo. 220; *Ex parte Wain* [1957] Cr. L.R. 111; *Gaskel* v. *Hudson* [1936] 2 K.B. 595; *R.* v. *Wallbridge* [1936] 4 D.L.R. 376; *Carl-Zeiss Stiftima* v. *Ragnu & Keeler Ltd.* [1960] 1 W.L.R. 1145; *Gatley* on Libel & Slander 5th Edn. page 108; *Halsbury's Law of England* Vol. 8 page 8; *English & Empire Digest* Vol. 16 page 25 para. 186; *Fifty Years Criminal Digest* by A.I.R. Vol. 1 pages 489, 490, 492, 499 and 540; The Changing Law by Lord *Denning;* The Road to Justice by Lord *Denning; Osborne* on Contempt.

ORIGINATING MOTION.

T. T. Rajah for the applicant.

Francis T. Seow (Solicitor General) (*Ho Thian Cheh* State Counsel with him) for the respondents.

Cur. Adv. Vult.

Choor Singh J.: This is an applicaion by one Lau Wee Soong, a former student of Ngee Ann College, for orders of committal against the respondents for contempt of the Second Criminal District Court, the contempt alleged being the making and publishing of statements prejudicial to the applicant in his pending trial before the said court. The first respondent is the Minister of the Interior and Defence and the second respondent is the Minister of Culture and Social Affairs in the Government of Singapore.

The circumstances which led to the application are these. On the afternoon of the 4th November 1966 there was a demonstration by a large number of students outside the City Hall in St. Andrew's Road, Singapore. According to a police statement issued later, some 200 students took part in the demonstration and according to the applicant, there were 300 armed policemen at the scene. The demonstration lasted several hours, during which period there were incidents involving the students and the police in the course of which force was used. Eventually the demonstrators were all dispersed by the police. The persons injured were 14 policemen, 3 civilians and 6 students.

The applicant was arrested at about 4 p.m. on the same day at the General Hospital when he went there for medical treatment. The following day, together with some others, he was charged in the Ninth Magistrate's Court with the offence of rioting in contravention of section 147 of the Penal Code. He claimed trial and was released on bail. Subsequently his case was transferred to the Second Criminal District Court. His trial commenced on the 6th March 1967 and he was tried on two charges, the first

charge being under section 147 of the Penal Code and the second charge being under section 323 read with section 149 of the Penal Code. The trial lasted 21 days and ended on the 21st April 1967 when he was convicted on both charges and sentenced to nine months' imprisonment on each charge, the terms of imprisonment to run concurrently.

The applicant states, and it is admitted by the respondents, that on the 4th November, 1966, after his arrest, the Ministry of the Interior and Defence issued a press statement which was broadcast over Radio Singapura and Television Singapura in all the official languages. On the following day, the 5th November, 1966, the first respondent issued a statement to newsmen at the General Hospital after he had visited one of the fourteen policemen injured outside City Hall the previous day. This statement was broadcast over Radio Singapura and Television Singapura on the same day.

The applicant's case is that he "did not participate in the use of any criminal force or commit any other violent acts against the police"; that the publication of the two statements referred to earlier had "completely, seriously, thoroughly and irreparably affected the impartial trial of his case and due administration of justice"; that the publication of the said statements "had prejudiced the public in general and the trial tribunal in particular"; that "the effect of such pre-trial inculpatory publications was disastrous as evidenced by his conviction"; and that "the public pronouncement of his guilt soon after his arrest by the first respondent and his Ministry and the publication thereof by Radio Singapura, Television Singapura, the *Straits Times* and *Eastern Sun* and other newspapers had completely, wholly and thoroughly deprived him of even the semblance of a fair trial." And the applicant asks this court for orders of committal against the respondents for their contempt of the Second Criminal District Court.

The press statement issued by the Ministry of the Interior and Defence against which complaint is made was broadcast by Radio Singapura and Television Singapura in the following terms:—

"Eight policemen and three civilians were injured by rioting students from Ngee Ann College outside the City Hall in St. Andrews Road this afternoon. One of the injured policemen has been warded in hospital with head injuries. Six persons who said they were students went to the hospital for treatment for minor injuries. Police detained them afterwards together with four others. Seven of those arrested had Malaysian identity cards.

A police statement said some 200 students of Ngee Ann College were involved in the demonstrations. They were joined by a few students from the University of Singapore, Nanyang University and the Polytechnic. The statement said the evidence shows that the students staged the illegal procession from Ngee Ann College to the Padang with every intention of staging clashes with the police. This was designed to draw public attention to the camping-in by the students at Ngee Ann College since the 25th of last month.

The statement said the students were aware that the public had become indifferent to their sit-ins. Early this morning, the students held a so-called pledge-taking ceremony at the College. Present were students of the other three institutions. At the ceremony, the students pricked their thumbs and smeared the blood on a memorandum protesting, among other things, against the Thong Saw Pak Report. They then staged an illegal procession through the city before heading for City Hall.

The statement said police had been informed that certain student leaders had decided to provoke clashes with the police in order to win sympathy for their cause should there be serious injuries to students. The police were instructed to act with restraint and to allow the students to demonstrate peacefully on the Padang. When the students reached City Hall, police tried to direct them to the Padang.

The statement said it soon became obvious that the leaders were not interested in a peaceful demonstration. Some 100 of them charged through the police ranks and rushed up the City Hall steps to try and get into the building.

However, they were prevented from doing so by the police closing the doors of City Hall. Foiled in this the students squatted on the balcony and steps singing songs and shouting abuse at the police. The students had brought with them buckets and cups to provide drinking water for the demonsrators, as well as food, milk and bottled drinks. These were later used as weapons against the police.

Even at this stage, the statement said, the police, knowing the real intention of the organisers of the demonstration, acted with restraint. The police made no attempt to clear the demonstrators so long as they were only singing and shouting. When the students realised that the police were not going to act against them, some of them started to taunt the police by nudging them and drawing their banners across the heads and faces of policemen. The police still refused to be provoked.

The statement said that at about 3.30 p.m. one of the students on the balcony went down the steps and told the police that he wanted to speak to reporters below. Later he returned and said that he wanted to rejoin his colleagues. The police said he could not do so. The students then remonstrated.

The refusal of the police to allow the student to return to the balcony was used as a pretext to rush at the police. Students started attacking the police. The statement said the police had no choice, but to draw their batons in order to defend themselves. Bottles and missiles were hurled at the police. Other students wrenched four of the floodlights outside City Hall and used them as weapons to attack the police. The police were now aware that the students were intent on violence. They charged and dispersed the students. About half the rioting students re-grouped on the Padang where they remained until 5.00 p.m. when they dispersed.

The statement said if there was no injury to the students, it was largely due to the restraint of the police. What today's incident clearly shows is that the organisers of these demonstrations are using what they claimed to be an academic issue relating to the reorganisation of Ngee Ann College as cover for lawlessness and violence."

The statement issued by the first respondent to newsmen at the General Hospital on 5th November 1966 was broadcast over Radio

Singapura and Television Singapura in the following terms:—

"The Defence Minister, Dr. Goh Keng Swee has said that students who break the law will have to face the consequences. The law will apply to them just as to other members of the public. Dr. Goh was speaking to newsmen at the General Hospital after he visited one of the 14 policemen injured by rioting students of Ngee Ann College outside City Hall yesterday. The policeman, Constable Hien Tow Hiong of the Reserve Unit, suffered head injuries in the clash. Dr. Goh described the rioting as deplorable. He said academic freedom is not freedom for the students to beat up the police. The Minister said if the students want to convince the Government that the Ngee Ann College should be turned into a University, they should do so by reason, logic and argument. He said the hooliganism displayed by the students is the worst way to achieve their aims, and the Government is not impressed.

Dr. Goh pointed out that the Government has been very lenient and patient with the Ngee Ann College students. They have been allowed to hold demonstrations and processions even without a police permit. But instead of returning to their classes after airing their grievances, he said, they have gone from one reckless adventure to another."

It is, I think, expedient, before I state the effect of the impugned statement, to refer to the principles which guide the court when dealing with contempt of court. Lord Blackburn has clearly explained what it means in *Skipworth's Case* [1] at page 232:—

"When a case is pending, whether it is civil or criminal, in a court, it ought to be tried, in the ordinary course of justice, fairly and impartially. When an action is pending in the court, and anything is done which has a tendency to obstruct the ordinary course of justice, or to prejudice the trial, there is a power given to the courts by the exercise of a summary jurisdiction to deal with and prevent any such matter which would interfere with the due course of justice, and that power has been exercised, I believe, from the earliest times the law has existed."

The cases show that the intention of the person who is alleged to have committed contempt of court is irrelevant. In the case of *Daw* v. *Eley*,[2] at p. 59, Lord Romilly is reported to have said, when dealing with a case of alleged contempt of court:—

"The principle is quite established in all these cases, that no person must do anything with a view to pervert the sources of justice or the proper flow of justice; in fact, they ought not to make any publication or to write anything which would induce the court, or which might possibly induce the court or the jury, the tribunal that will have to try the matter, to come to any conclusion other than that which is to be derived from the evidence in the case between the parties, and certainly they ought not to prejudice the minds of the public beforehand by mentioning circumstances relating to the case. Now, if that is done with the intention of perverting the ends of justice, there is no question that the court would stop it, and very often the court will judge for itself what are the fair inferences to be derived from the publications where the evident result would be to affect the administration of justice, though that might not have been the intention of the person who did it."

Nor is *mens rea* a necessary constitutent of a contempt of which the court would take cognizance and punish. In *R.* v. *Odhams Press Ltd. & Ors.*[3] it was held that *mens rea* need not be present and that lack of intention or knowledge was only material in relation to the penalty which the court would inflict. Lord Goddard C.J. referred to *Roach* v. *Garvan*,[4] and *Ex parte Jones*,[5] and said, at page 801:—

"These cases clearly show that lack of intention or knowledge is no excuse, though it may have a great bearing on the punishment which the court will inflict and, in our opinion, they dispose of the argument that *mens rea* must be present to constitute a contempt of which the court will take cognizance and punish.

The test is whether the matter complained of is calculated to interfere with the course of justice, not whether the authors and printers intended that result, just as it is no defence for the person responsible for the publication of a libel to plead that he did not know that the matter was defamatory and had no intention to defame. It is obvious that if a person does not know that proceedings have begun or are imminent, he cannot by writing or speech be said to intend to influence the course of justice or to prejudice a litigant or accused person, but that is no answer if he publishes that which in fact is calculated to prejudice a fair trial."

It has been said by the courts that in considering the doctrine of contempt of court, it must be borne in mind that the right of an accused person to a fair and impartial trial is of paramount importance. In *R.* v. *Parnell & Ors.*,[6] Barry J. said at page 484:—

"No legitimate reason exists for the public discussion of the approaching trial beyond the gratification of idle speculation. If in such a case any newspaper is published containing matter calculated to prejudice the fair trial of the defendant, I think the undoubted jurisdiction of the court should be exercised with promptitude, vigour, and determination to stop such interferences with the free and impartial administration of the law, and, if necessary, impose upon the offender an exemplary punishment. In such a case, when a defendant invokes the protection of the court, the court will not entertain by way of answer to his appeal any discussion upon the merits of the case for trial, nor its political or social importance, nor as to the truth of the prejudicial statements of which he complains. The sole question for the court is, the character and tendency of the publication. Freedom of the press, freedom in speech in public affairs are to be cherished and maintained, though they may sometimes be abused in the heated atmosphere of political conflict; but, when a matter is brought within the cognizance of the court, impartiality of trial is, and I hope ever will be, the paramount consideration."

In *Vine Products Ltd.* v. *Green*,[7] Buckley J., said, at page 798:—

"The right of the press to comment on any matter of general public interest, so long as the comment is fair comment, is a matter of very great public interest, but it is a right which is subject to certain restrictions, one of which is that the organs of the press must not be used in any way to prejudice the proper trial of actions in the courts of the country, that being a higher public interest."

The question as to what constitutes contempt of court was dealt with exhaustively by Lord Parker C.J. in *R.* v. *Duffy & Ors.*,[8] where after examining all the leading cases on the subject, his Lordship observed, at page 197:—

"The question in every case is whether, in all the

circumstances existing at the date of publication, including the content and form of the article, the circulation of the paper in which it appears and the state of the proceedings, the article was intended or calculated to prejudice the fair hearing of the proceedings."

It has been suggested that, where the case will be tried by a judge or magistrate alone, he cannot be affected by outside influence, and therefore the publication will not tend to affect the due administration of justice. This point was first considered in *R.* v. *Davies, ex parte Delbert-Evans,*[9] where Humphreys J. at p. 442 said:—

"I think it is a fallacy to say or to assume that the presiding judge is a person who cannot be affected by outside information. He is a human being, and while I do not suggest that it is likely that any judge, as the result of information which had been improperly conveyed to him, would give a decision which otherwise he would not have given, it is embarrassing to a judge that he should be informed of matters which he would much rather not hear and which make it much more difficult for him to do his duty. . ."

and at page 443:—

It seems to me that the bringing before the minds of judges who have to try an appeal in a criminal case matters which they do not desire to know, and which if brought to their attention are likely to embarrass them in the fair and impartial consideration of the case, is wrong. Whether this view is right or not, I cannot say. It is my own opinion and I express it as such, but I venture to think that no judge with long criminal experience will fail to be able to recall instances in which the publication of matters such as that to which I have referred has had the effect of making the task of a judge extremely difficult, and no one has the right to publish matter which will have that effect."

And in the same case, Oliver J. said, at page 445:—

"I fully agree with my Lord, and I share his view as to the importance of the matter, that jurors are not the only people whose minds can be affected by prejudice. One of the evils of inadmissible matter being disseminated is that no one can tell what effect a particular piece of information may have on his mind. Why, as my Lord has asked and I can think of no better word, should a judge be 'embarrassed' by having matters put into his mind, the effect of which it is impossible to estimate or assess?"

In *Re Sin Poh Amalgamated Ltd. & Ors.*[10] Murray-Aynsley C.J. in dealing with the same point, said, at page 153:—

"Where there is going to be a trial by jury any comment is a very serious matter indeed. Where there is a trial by jury it is desirable that jurors should start hearing a case with minds free from prejudice and they should know nothing about a case except what they hear in court. If they have been reading in newspapers the views of the editor and of people who have thought fit to express their views in letters to the editor it is difficult for them to separate what they hear in court from what they have read outside. Where there is a trial before a judge or magistrate the matter is not so serious but it is still not to be regarded lightly. Professional training does enable lawyers to form an opinion of the effect of evidence regardless of what they know otherwise. But it is not easy and the mind may always be influenced unconsciously."

The views of Humphreys J. and Oliver J. in *Rex* v. *Davies* were considered in *R.* v. *Duffy & Ors.*, where the court consisted of Lord Parker C.J., Hilbery, Cassels, Donovan and Davies JJ. Lord Parker C.J. who delivered the judgment of the court, in referring to *dicta* in *Rex* v. *Davies,* said at page 200:—

"It is by no means clear what the judges in that case intended to convey by the word 'embarrassed'. If, in its context, the word means no more than this, namely, that the article had put upon the judge, quite unnecessarily, the task of dismissing the offending matter from his mind, then we think the *dicta* we have quoted go too far. Embarrassment which has no effect on impartiality is not necessarily contempt of court. The question always is whether a judge would be so influenced by the article that his impartiality might well be consciously, or even unconsciously, affected. In other words, was there a real risk, as opposed to a remote possibility, that the article was calculated to prejudice a fair hearing."

There is also authority for the proposition that in applying the law of contempt the court will not lose sight of local conditions. In *Public Prosecutor* v. *Straits Times,*[11] Spenser-Wilkinson J. said, at page 82:—

"I do not propose to deal with all these authorities. I have studied them with great care, but I would hesitate to follow too closely the decisions of English courts on this subject without first considering whether the relevant conditions in England and this country are at all similar. Quite apart from the present emergency in this country, I do not think it could be suggested that the development of the Press, the general standard of education or the composition of the general public in the two countries are at all comparable and it may, therefore, be necessary to take a stricter view here of matters which pertain to the dignity of the courts and the impartial administration of justice than would be taken at the present time in England. There is, moreover, authority for the proposition that in applying the law of contempt the court will not lose sight of local conditions (*McLeod* v. *St. Aubyn,* [1899] A.C. 549), cited with approval in *Ambard* v. *Attorney-General for Trinidad and Tobago,* [1936] A.C. 322 at p. 335."

The issue in the present case is whether what was said in those two statements was likely to prejudice the fair trial of the applicant. The fact that the trial is over is irrelevant; so is the fact that he has been convicted and that his appeal against his conviction has not been heard yet.

In applying the law of contempt the court must not lose sight of the present extraordinary circumstances prevailing in Singapore. Certain members of Parliament have resigned from Parliament so that they may, to use their own words, "take the battle to the streets." Street demonstrations involving the destruction of public property and clashes with the police are taking place in many parts of Singapore. It is abundantly clear that there is an organised movement to defy law and order and to establish chaos in Singapore. The court must take judicial notice of these matters of common knowledge and the two statements complained of must be judged against this background.

First, I will consider the statement issued by the Ministry of the Interior and Defence.

There is no doubt at all that there was in Singapore on the afternoon of the 4th November 1966 a public disturbance of such magnitude that a substantial number of policemen and civilians were injured. What is the duty of the Government of Singapore when such a large-scale disturbance occurs? Have not the members of the public a right to know what the disturbance was about? In my judgment it is plainly the duty of the Government not only to maintain law and order but also to give the public as much information as is proper concerning any such disturbance. I find that the first respondent in authorising the issue of this statement by his Ministry was merely carrying out this duty. I consider it to be a part of such duty for a Minister responsible for keeping law and order to make public statements on incidents involving defiance of law and order with a view to preventing the spread of such defiance and also to scotch rumours designed to stir up ill-will against the police.

In my opinion the statement issued by the Ministry of the Interior and Defence is no more than a factual account of what occurred in front of the City Hall on the day in question. The statement states facts which no doubt do imply that the offence of rioting was committed by some of the students from Ngee Ann College, the University of Singapore, Nanyang University and the Singapore Polytechnic who took part in the demonstration, but there is nothing in the statement which directly or indirectly identifies the applicant as one of the rioters.

Counsel for the applicant submits that for his application to succeed, it is not necessary that the applicant should have been named in the statement made by the Ministry. I agree with this submission.

Counsel for the applicant submits that the statement in question identifies a group of persons as rioters, namely, students of Ngee Ann College, and as the applicant was at the material time a student of Ngee Ann College and was in fact at the scene of the alleged rioting, the public and the trial judge might come to the conclusion that he was one of the rioting group, and that the statement was accordingly calculated to prejudice his trial. The following passage from *Gatley* on Libel and Slander, 5th edn., at page 108 is cited in support of this submission:—

> "The test of whether words that do not specifically name the plaintiff refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to? That does not assume that those persons who read the words know all the circumstances or all the relevant facts. But although the plaintiff is not named in words, he may, nevertheless, be described so as to be recognised; and whether that description takes the form of a word-picture of an individual or the form of a reference to a class of persons of which he is or is believed to be a member, or any other form, if in the circumstances the description is such that a person hearing or reading the alleged libel would reasonably believe that the plaintiff was referred to, that is a sufficient reference to him."

In my opinion the fact that the applicant was at the scene of the rioting is not apparent from a perusal of the statement. It is true that the persons who rioted that afternoon in front of the City Hall are said in the statement to include students of Ngee Ann College. But it does not follow that the statement implies that every student of Ngee Ann College was involved in the rioting or that every one of the 200 students of Ngee Ann College present at the scene was so involved. The court which had to try the applicant on the charge of rioting had two clear issues before it: first, whether or not "rioting" within the meaning of the Penal Code was in fact committed on the day in question and, secondly, if it was, whether or not the applicant took part in that riot. The applicant not having been named or otherwise identified in the statement, I fail to see how the publication of the statement can be said to be likely to prejudice his fair trial.

Counsel for the applicant cites the following passage from the judgment of Lord Alverstone C.J. in *R.* v. *Tibbits*,[12] at page 901, in support of his submission that the statement in question was prejudicial to the applicant:—

> "A person accused of crime in this country can properly be convicted only upon evidence which is legally admissible, and which is adduced at his trial in legal form and shape. Assume the accused to be really guilty of the offence charged against him. The due course of law and justice is perverted and obstructed, nevertheless, if those who have to try him are induced to approach the question of his guilt or innocence with minds into which prejudice has been instilled by published assertions of his guilt, or imputation against his life and character to which the laws of the land refuse admissibility as evidence."

In my opinion, the applicant not having been named or identified in the statement, it cannot be said that there was any published assertion of his guilt or any imputation against his character.

The next submission of counsel for the applicant is that the statement in question discusses the evidence to be given at the trial of the applicant; that it contains a gist or summary of the case for the prosecution; that it is a one-sided version of the incident and is therefore a contempt of court. Reliance is placed upon a statement in the judgment of Cottoń L.J. in *Hunt* v. *Clarke*,[13] where he said:—

> "If anyone discusses in a paper the rights of a case or the evidence to be given before the case comes on, that, in my opinion, would be a very serious attempt to interfere with the proper administration of justice."

This statement of Cotton L.J. was cited to the court in *Vine Products Ltd.* v. *Green*, and Buckley J. said in reference to it, at page 800:—

"I think, however, that it must be remembered that the case in which that was said was concerned with comment upon an action which was to be tried by jury, and Cotton L.J., went on in the same passage to say: 'It is not necessary that the court should come to the conclusion that a judge or jury will be prejudiced, but if it is calculated to prejudiced the proper trial of a cause, that is a contempt, and would be met with the necessary punishment in order to restrain such conduct.'

What the Lord Justice was there saying, in my judgment, is that, if you have such a discussion in a paper of the rights of some pending litigation as is calculated to prejudice the proper trial of the action, that is a serious contempt which will be met with the necessary punishment. I do not think it is right to take that statement out of its context and say that anything which happens to amount to or be equivalent to a discussion of the rights of some party's case in an action is thereby automatically a contempt, even if only a technical contempt. The test must always be, in my judgment, whether or not in the circumstances of the particular case what has happened is something which is likely to prejudice the fair trial of the action, and the risk that it will prejudice the fair trial of the action must be a real risk."

In my judgment, the statement in question cannot by any stretch of imagination be said to contain a gist or summary of the evidence for the prosecution to be tendered against the applicant at his trial. And as to the allegation that it is a one-sided version of the incident, it is undoubtedly the Government's version of the incident, but that does not make it a one-sided version. When the protection of the court is invoked by an accused person, the court cannot, as was said by Barry J., in *Parnell's Case, supra,* at page 484, "entertain any discussion upon the merits of the case for trial, nor as to the truth of the prejudicial statement of which he complains. The sole question for the court is the character and tendency of the publication."

In *Meriden Britannia Co.* v. *Walters,*[14] Boyd C., said at page 169:—

"The apprehension of detriment must be of a tangible character, plainly tending to obstruct or prejudice the due administration of justice in the particular case pending. Regard must be had to all the surrounding circumstances: the manner of trial, the time of publication, the causes leading to the publication, and the tenor of what is published."

I have examined the statement in question with great care and having regard to all the surrounding circumstances I am not satisfied that the statement was calculated to prejudice the fair trial of the applicant.

As regards the statement made by the first respondent to newsmen at the General Hospital, it was a statement in general terms and neither directly nor indirectly does it refer to the applicant or his pending trial. It is common knowledge that there are people in Singapore bent on instigating defiance of law and order. It is clearly the duty of the Minister of the Interior to take such steps as he may deem necessary to prevent the spread of such defiance. In my judgment what was said by the Minister in this statement was within the scope of his duty. I do not see how such a statement can be treated as contempt of court.

If I am wrong and the statements are in fact calculated to prejudice the fair trial of the applicant, it seems to me that I must accept the contention of counsel for the respondents that the contempt of court constituted by the two statements was not such a contempt as would justify the court in interfering by way of the summary procedure which has been adopted in this case. According to a series of decisions in England over the last 80 or 90 years, it is only in the graver instances of contempt that the court will interfere in the matter by issuing a writ of attachment or an order of committal. Thus, in *R.* v. *Payne,*[15] Lord Russell of Killowen C.J., said:—

"I wish to express the view which I entertain, that applications of this nature have in many cases gone too far. No doubt the power which the court possesses in such cases is a salutary power, and it ought to be exercised in cases where there is real contempt, but only where there are serious grounds for its exercise. Every libel on a person about to be tried is not necessarily a contempt of court; but the applicant must show that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending."

In *Hunt* v. *Clarke,* Lord Justice Cotton in dealing with the question of punishment in cases of contempt of court, said, at page 493:—

"I apply and adopt as the principle which ought to regulate these applications — that there should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the court in order to enable justice to be duly and properly administered without any interruption or interference, that is what we have to consider, and in my opinion, although as I say there is here that which is technically a contempt, and may be such a contempt as to be of a serious nature, I cannot think there is any such interference or any such fear of such intereference with the due conduct of this action, or any such prejudice to the defendant who is applying here, as to justify the court in interfering by this summary and arbitrary process."

In *The Plating Company* v. *Farquharson,*[16] at p. 55, the Master of the Rolls, Sir George Jessel, lays it down that "unless the court is satisfied that the publication is a contempt which interferes with the course of justice, of course the court ought not to interfere"; and he further observes that the jurisdiction, being arbitrary and unlimited, should be most jealously and carefully watched, and exercised with the greatest reluctance and the greatest anxiety. The same principle was adopted and acted upon in *The King* v. *The Freeman's Journal.*[17] Indeed, so strongly do the courts disapprove of motions to commit when there is no real case for committal, that in *The Plating Company* v. *Farquharson,* James L.J., characterizes such motions "as a contempt of court in themselves." And in the case of the *Pontefract Election Petition,*[18] Cave J., says that some of the applications grounded on supposed

contempt, "have really tended to bring the doctrine in itself into contempt."

These are decisions of the greatest weight and authority and establish that the jurisdiction which this court possesses to punish for criminal contempt should only be exercised when the risk of interference with the proper administration of justice is a real and grave one.

Counsel for the applicant informed the court that these proceedings have been brought to restrain the Government from making public statements prejudicial to persons under arrest. He stated that the Minister of the Interior was in the habit of making or issuing such statements, and he cited the case of *Re application of Foong Jam Keong* (19) as another instance where according to him statements prejudicial to accused persons were made in respect of an incident in which the police used firearms and some persons were shot. I understood him to say that the present proceedings were in the nature of a test case and the object was to put a stop to such statements.

In my opinion, to suggest that the Government should not give information to the public by radio and television on matters of great public interest relating to the maintenance of law and order is simply to demand the abandonment by the Government of their duty and the surrender of their authority. To grant a committal order in these proceedings and thereby restrain the publication of similar statements in future would be simply in effect to make an order that while those who defy law and order are to be at liberty to do and say whatever they think fit in pursuit of their political purpose, no voice is to be raised on behalf of the vast majority of the community who believe their most valued interests to be menaced and assailed. In *Re application of Foong Jam Keong* Chua J., in dealing with a ministerial statement made in respect of the incident referred to by counsel for the applicant, observed:—

> "Now all these acts of lawlessness were certainly matters of grave public interest and concern and the Government owed a high duty to the public to keep it informed."

I respectfully agree with these views. In my judgment, the two statements with which we are concerned in these proceedings were made by the first respondent in the faithful discharge of the high duty to keep the public informed, especially in the context of the circumstances prevailing in Singapore, lest evil-doers twist the facts and distort the real truth for their own nefarious and and evil ends.

Of course, it does not follow that a statement made or issued by a Government Minister can never constitute contempt of court, or that a Government Minister should never be punished for contempt of court. A Minister of the Government is not above the law and if a statement made by him is calculated to prejudice the fair trial of an accused person, and if the risk of interference with the proper administration of justice is a real and grave one, such a contempt will be met with the necessary punishment in order to restrain such conduct. But in considering ministerial statements made in the discharge of a public duty, the court must be very cautious that it does not by its act interfere unnecessarily with and abridge the right of the Government to comment on matters so largely involving the public interest. Although it is obvious that a ministerial statement relating to incidents involving defiance of law and order may sometimes give rise to complaints of alleged prejudice to an accused person awaiting trial, the court, in my opinion, should not lightly interfere with the Government's right to make such statements, unless of course it is satisfied that under cover and pretence of comment on a matter of public importance, it was intended to prejudice the course of justice in a pending trial.

For the above reasons the motion is dismissed with costs.

Motion dismissed.

LIM YAN HUA v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) March 28, 1967]

[Sibu — Criminal Appeal No. 2 of 1967]

Criminal Law and Procedure — Charge — Duty of magistrate before reading it to accused.

Criminal Law and Procedure — Charge — Duplicity — Irregularity — No failure of justice.

It is the duty of every magistrate to study the charge before it is read to an accused person. He must see whether the wording of the charge is grammatically correct or not. Also he must watch the punctuation.

In this case as there was nothing to indicate that the appellant did not know for what offence he was charged in court and no objection was taken as to the charge at the trial, even if there was any irregularity it was curable under section 331 of the Criminal Procedure Code (Sarawak Cap. 58) as such irregularity had not occasioned a failure of justice.

Cases referred to:—

(1) *Public Prosecutor* v. *Leong Yoon Meow* [1953] M.L.J. xxxv.

(2) *Public Prosecutor* v. *Syed Bakri* [1955] M.L.J. xxii.

(3) *Lee Chin Kee* v. *Public Prosecutor* [1935] M.L.J. 157.

(4) *Taylor* v. *Goodwin* 4 Q.B.D. 228.

MAGISTRATE'S CRIMINAL APPEAL.

Chew Peng Cheng for the appellant.

C. J. Millar (Deputy Public Prosecutor) for the respondent.

Lee Hun Hoe J.: I dismissed the appeal and stated that I would give my reasons. I now do so.